

ESTTA Tracking number: **ESTTA398589**

Filing date: **03/17/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	CatherineStewartLindley
Granted to Date of previous extension	03/23/2011
Address	280 Manhattan Avenue, #1N New York, NY 10026 UNITED STATES

Attorney information	Meredith P. Gammill Armstrong Teasdale LLP 7700 Forsyth Blvd., Suite 1800 St. Louis, MO 63105 UNITED STATES iptm@armstrongteasdale.com Phone:314-621-5070
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Applicant Information

Application No	85036007	Publication date	11/23/2010
Opposition Filing Date	03/17/2011	Opposition Period Ends	03/23/2011
Applicants	<p>Hanson, Amanda Marie 936 Monroe Way Superior, CO 80027 UNITED STATES</p> <p>Nowlin, Judith Ann 555 South 40th St Boulder, CO 80305 UNITED STATES</p>		

Goods/Services Affected by Opposition

Class 041. First Use: 2009/11/01 First Use In Commerce: 2009/12/10


All goods and services in the class are opposed, namely: Education services, namely, providing video presentations, related film clips and information, in the field of childbirth preparation rendered via mobile platforms

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85113199	Application Date	08/23/2010
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	IBIRTH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2006/11/21 First Use In Commerce: 2006/11/21 Education services, namely conducting classes and workshops in the field of childbirth and postpartum		

Attachments	85113199#TMSN.jpeg (1 page)(bytes) IBIRTH Opposition.pdf (13 pages)(4522643 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/MPG-ATLLP/
Name	Meredith P. Gammill
Date	03/17/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

CATHERINE STEWART-LINDLEY

Opposer,

vs.

JUDITH ANN NOWLIN, DBA IBIRTH LIMITED

AMANDA MARIE HANSON, DBA IBIRTH LIMITED)

Applicants.

Opposition No. _____

Mark: **IBIRTH**

Serial No. 85/036,007

Published: November 23, 2010

NOTICE OF OPPOSITION

Opposer, Catherine Stewart-Lindley, 280 Manhattan Avenue, #1N, New York, NY 10026, having adopted and used the mark IBIRTH Application Serial No. 85/113,199 for *educational services, namely conducting classes and workshops in the field of childbirth and postpartum* and related services, believes that it will be damaged by registration of the mark IBIRTH that is the subject of Application Serial No. 85/036,007, filed in the name of Judith Ann Nowlin, d/b/a iBirth Limited and Amanda Marie Hanson, d/b/a iBirth Limited ("Applicants") and published in the Official Gazette of November 23, 2010 and hereby opposes the same pursuant to 15 U.S.C. §§ et seq., including specifically 15 U.S.C. § 1063.

This Notice of Opposition has been timely filed. As grounds in support of its opposition, Opposer asserts as follows:

1. Opposer, since 2006 and long prior to any date of first use upon which Applicants can rely, has adopted and continuously used the term IBIRTH as a trademark for *educational*

services, namely conducting classes and workshops in the field of childbirth and postpartum and related services.

2. Opposer is the owner of Trademark Application Ser. No. 85/113,199 for the mark IBIRTH for *educational services, namely conducting classes and workshops in the field of childbirth and postpartum in Class 41*. Opposer claims first use in commerce of IBIRTH on November 21, 2006. True and correct copies of the electronic record for this application printed from the United States Trademark Office's (USPTO) Trademark Applications and Registrations Retrieval ("TARR") online database are attached hereto as Opposer's Exhibit 1.

3. Opposer has made investments in advertising and in promoting its services under IBIRTH. Opposer has used, advertised, promoted and offered Opposer's services under IBIRTH to the relevant purchasing public through channels of trade in commerce, such that Opposer's customers and the relevant purchasing public have come to know and recognize IBIRTH and associate it with Opposer and/or the services offered by Opposer. Opposer has built goodwill in connection with the provision of services under IBIRTH.

4. Applicants have filed an application to register the mark IBIRTH for *educational services, namely providing video presentations, related film clips and information, in the field of childbirth preparation rendered via mobile platforms in Class 41*. That application was filed on May 12, 2010, and was assigned Serial No. 85/036,007. Applicants claim first use in commerce of the alleged IBIRTH trademark on November 1, 2009. True and correct copies of the electronic record for this application printed from the USPTO's TARR online database are attached hereto as Opposer's Exhibit 2.

5. Opposer's common law rights in IBIRTH, are superior to any rights Applicants may have in the IBIRTH mark.

6. Applicants' proposed mark is confusingly similar to Opposer's mark because it is identical in appearance, sound, and commercial impression, pursuant to 15 U.S.C. § 1052(d). The likelihood of confusion is further exacerbated because the services offered under Applicants' mark are identical, or closely related, to the services offered under the Opposer's mark. Applicants and Opposer both market their services to the same, narrow consumer. Accordingly, consumers may believe, incorrectly, that Applicants' use of IBIRTH is an extension of Opposer's mark.

7. Given the goodwill arising from the association of the IBIRTH mark with Opposer, consumers may believe, incorrectly, that Opposer has licensed, approved, or otherwise authorized Applicants' use of the IBIRTH when it has not.

8. The maturation of Applicants' application into registration will cause a likelihood of confusion, mistake, or deception with respect to the source or origin of Applicants' services. Consumers will erroneously believe that Applicants' services are associated with Opposer.

9. In view of Opposer's superior rights in the IBIRTH mark, the USPTO should refuse the registration of IBIRTH by Applicants.

10. Pursuant to 15 U.S.C. § 1063(a), Opposer will be damaged by registration of Applicants' mark, which would grant Applicants a *prima facie* exclusive right to use the proposed mark despite Opposer's priority over Applicants and the likelihood of confusion and injury to goodwill that will be caused by Applicant's mark.

11. In summary, registration of the proposed mark would be incorrect and improper in view of the requirements of the Trademark Act of 1946, as amended, including specifically but not limited to the provisions of 15 U.S.C. §§ 1051, *et seq.*

Wherefore, Opposer prays that this Opposition be sustained and that registration to Applicants' IBIRTH as shown in Application Serial No. 85/036,007 for the services identified in Class 41 be denied.

Opposer submits this Notice of Opposition via the e-filing procedure of the Trademark Trial and Appeal Board, and hereby advises the Board that it may debit the Deposit Account No. 01-2384 of Armstrong Teasdale LLP for the appropriate filing fee of \$300.00. Please direct all notices, pleadings, and correspondence in this matter to the undersigned counsel for Opposer Catherine Stewart-Lindley.

DATED: March 17, 2011

RESPECTFULLY SUBMITTED,

BY:


Meredith P. Gammill, DC Bar No. 488362
Andrew B. Mayfield, Mo. Bar No. 38530
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ATTORNEYS FOR OPPOSER CATHERINE
STEWART-LINDLEY.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **NOTICE OF OPPOSITION** has been served by mailing said copy on March 17, 2011 via First-Class Mail, postage pre-paid, to:

Lula B
Attn: Judith Nowlin
P.O Box 4082
Boulder Colorado 80306
tech@ibirthapp.com

With a copy to:
David G. Wolff, J.D. L.L.M
1821 Pine Street
Erie, Colorado 80516
dgwolff67@yahoo.com



Attorney for Opposer

EXHIBIT 1

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-03-15 17:27:44 ET

Serial Number: 85113199 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

IBIRTH

(words only): IBIRTH

Standard Character claim: Yes

Current Status: An Office action suspending further action on the application has been sent (issued) to the applicant. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Date of Status: 2010-12-07

Filing Date: 2010-08-23

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 109

Attorney Assigned:
HABEEB MYRIAH A

Current Location: L9X -TMEG Law Office 109 - Examining Attorney Assigned

Date In Location: 2011-02-22

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Catherine Stewart-Lindley

Address:

Catherine Stewart-Lindley
280 Manhattan Avenue, #1N
New York, NY 10026
United States

Legal Entity Type: Individual

Country of Citizenship: United States

GOODS AND/OR SERVICES

International Class: 041

Class Status: Active

Education services, namely conducting classes and workshops in the field of childbirth and postpartum

Basis: 1(a)

First Use Date: 2006-11-21

First Use in Commerce Date: 2006-11-21

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2010-12-07 - Notification Of Letter Of Suspension E-Mailed

2010-12-07 - Letter of suspension e-mailed

2010-12-07 - Suspension Letter Written

2010-12-07 - Assigned To Examiner

2010-08-27 - Notice Of Pseudo Mark Mailed

2010-08-26 - New Application Office Supplied Data Entered In Tram

2010-08-26 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Meredith P. Gammill

Correspondent

MEREDITH P. GAMMILL
ARMSTRONG TEASDALE LLP
7700 FORSYTH BLVD STE 1800
SAINT LOUIS, MO 63105-1847
Phone Number: 314-621-5070
Fax Number: 314-621-5065

EXHIBIT 2

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-03-15 17:31:06 ET

Serial Number: 85036007 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

iBirth

(words only): IBIRTH

Standard Character claim: Yes

Current Status: A request for an extension of time to file an opposition has been filed with the Trademark Trial and Appeal Board. For further information, see TTABVUE on the Trademark Trial and Appeal Board web page.

Date of Status: 2010-11-23

Filing Date: 2010-05-12

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 112

Attorney Assigned:
HAMPTON CHARISMA

Current Location: 650 -Publication And Issue Section

Date In Location: 2010-10-21

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Hanson, Amanda Marie

DBA/AKA/TA/Formerly: DBA iBirth

Address:

Hanson, Amanda Marie
936 Monroe Way
Superior, CO 80027
United States

Legal Entity Type: Limited Liability Company**State or Country Where Organized:** Colorado**Phone Number:** 720-880-8564

2. Nowlin, Judith Ann

DBA/AKA/TA/Formerly: DBA iBirth**Address:**

Nowlin, Judith Ann
555 South 40th St
Boulder, CO 80305
United States

Legal Entity Type: Limited Liability Company**State or Country Where Organized:** Colorado**Phone Number:** 303-519-4519

GOODS AND/OR SERVICES**International Class:** 041**Class Status:** Active

Education services, namely, providing video presentations, related film clips and information, in the field of childbirth preparation rendered via mobile platforms

Basis: 1(a)**First Use Date:** 2009-11-01**First Use in Commerce Date:** 2009-12-10

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2010-11-23 - Extension Of Time To Oppose Received

2010-11-23 - Notice Of Publication E-Mailed

2010-11-23 - Published for opposition
2010-10-21 - Law Office Publication Review Completed
2010-10-21 - Approved for Pub - Principal Register (Initial exam)
2010-10-01 - TEAS Change Of Correspondence Received
2010-10-01 - Teas/Email Correspondence Entered
2010-10-01 - Communication received from applicant
2010-09-30 - Assigned To LIE
2010-09-27 - TEAS Response to Office Action Received
2010-09-01 - Notification Of Non-Final Action E-Mailed
2010-09-01 - Non-final action e-mailed
2010-09-01 - Non-Final Action Written
2010-08-25 - Assigned To Examiner
2010-05-18 - Notice Of Pseudo Mark Mailed
2010-05-17 - New Application Office Supplied Data Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

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Boulder CO 80306
